



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

CONSOLIDATED RAIL CORPORATION)

a/k/a CONRAIL,)

Defendant and)

Third Party Plaintiff,)

PENN CENTRAL CORPORATION,)

et al.,)

Third Party Defendants.)

The deposition of RONALD L. DIVELY

Date: Thursday December 17, 1992

Time: 10:00 a.m.

Place: 205 Jefferson Blvd.
South Bend, Indiana

Called as a witness by the Plaintiff in
accordance with the Indiana Rules of Civil Procedure,
pursuant to agreement.

Geneva L. Sones
Court Reporter

MR. KURT N. LINDLAND
U.S. Environmental Protection Agency
Region 5:CS-3T
77 West Jackson Boulevard
Chicago, Illinois 60604

For the Plaintiff;

MR. JAMES A. ERMILIO
Bingham, Dana & Gould
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1550 M. Street, N.W.
Washington, D.C. 20005

For Consolidated Rail Corporation;

MR. PIERCE E. CUNNINGHAM
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For Penn Central Corporation.

I N D E X
THE DEPOSITION OF
RONALD L. DIVELY

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RONALD L. DIVELY

called as a witness by the Plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LINDLAND:

Q. Would you state your name for the record?

A. Ronald L. Dively.

Q. Mr. Dively, what's your address?

A. [REDACTED] (b) (6)

Q. And your phone number?

A. [REDACTED] (b) (6)

MR. LINDLAND: My name is Kurt Lindland. I represent the United States Environmental Protection Agency in the action for which we are here today. If there's a question that I ask that you don't understand, say you don't understand it and I can rephrase it for you. If you need to leave for any reason, just say something and we can arrange for a break. If there's an objection by anyone in the room, you should answer the question unless your attorney instructs you otherwise.

1 Do you understand everything I've
2 just said?

3 THE WITNESS: I do.

4 BY MR. LINDLAND:

5 Q. Are you familiar with the oath that you just
6 took?

7 A. Yes, I am.

8 Q. Do you recognize that oath as binding on you
9 today, as it would be in a court of law?

10 A. Yes.

11 Q. Have you ever been deposed on another
12 occasion?

13 A. Yes, I have.

14 Q. When was that?

15 A. About four years ago.

16 Q. Approximately 1988?

17 A. Correct.

18 Q. Do you remember the name of the action?

19 A. I don't remember the action. It was a
20 personal injury.

21 Q. Do you remember any of the parties involved?

22 A. No, I don't.

23 Q. Was the Consolidated Rail Corporation
24 involved in that, too?

25 A. Yes, it was.

1 Q. They were being sued by an employee?

2 A. That is correct.

3 Q. Do you remember whether hazardous materials
4 were involved in that?

5 A. No, they weren't.

6 Q. Were you deposed on any other occasion?

7 A. One other occasion; it was a personal injury
8 also.

9 Q. Do you remember the year?

10 A. No, I don't; it was in Pittsburgh.

11 Q. Was it after 1988?

12 A. Before.

13 Q. Was that also involving the Consolidated
14 Rail Corporation?

15 A. That's correct.

16 Q. Was that lawsuit related to hazardous
17 materials?

18 A. No, it wasn't.

19 Q. Have you ever testified at trial?

20 A. No, I haven't.

21 Q. Did you speak with anyone in preparation for
22 your deposition today?

23 A. The only one I spoke with was the attorney.

24 Q. Did you speak with anyone else?

25 A. I talked with the supervisor who is coming.

1 in, Mark Ritchie.

2 Q. When did you speak with Mark Ritchie?

3 A. Yesterday.

4 Q. Did you talk to him by telephone?

5 A. Yes, by phone and personally.

6 Q. What was the substance of your conversation
7 with Mr. Ritchie?

8 A. About coming in and testifying. The only
9 thing I knew that might entail would be
10 cleaning equipment, and that he was
11 basically the one that handled that and I
12 don't know a whole lot about it.

13 Q. Did he discuss with you anything relating to
14 hazardous materials?

15 A. No, nothing about hazardous materials.
16 Well, except for -- I'm not sure, but I
17 think I might have mentioned the disposal of
18 drums, that we have a vendor picking up
19 drums. I'm not sure on that one.

20 Q. You're not sure --

21 A. Whether I spoke to him about that particular
22 subject, but I might have.

23 Q. You said "disposal of drums," and something
24 about a vendor?

25 A. About the vendor picking them up.

1 Q. Did you speak to him about anything else?

2 A. I spoke to him about other items, but not
3 pertaining to this.

4 Q. Did you speak with anyone else other than
5 your attorney and Mr. Ritchie, concerning
6 this deposition?

7 A. I don't recall speaking to anyone else.

8 Q. Did you review any documents in preparation
9 for this deposition?

10 A. No, I didn't.

11 Q. Did you prepare any documents, memorandums,
12 notes, anything of that nature?

13 A. No.

14 Q. Did you bring with you any documents today?

15 A. No, I didn't.

16 Q. Do you know whether your attorney has
17 reviewed your file at Conrail?

18 A. I have no idea.

19 Q. Do you have any files regarding your job at
20 Conrail, other than those in your office at
21 Conrail?

22 A. No, that's all I have.

23 Q. I'd like to get some information on your
24 background with respect to your education;
25 if you could, in summary form, just state

1 your educational background beginning with
2 high school.

3 A. I graduated from Hollidaysburg High School
4 in 1958.

5 Q. That was in Pennsylvania?

6 A. Yes, sir.

7 Q. Did you attend college after that?

8 A. No, I didn't. I just attended various
9 training schools with Ford Motor Company and
10 with Conrail.

11 Q. What was the first training school you
12 attended?

13 A. It was around 1961.

14 Q. Who sponsored that training?

15 A. Ford Motor Company.

16 Q. Do you remember the substance of the
17 material discussed in that training?

18 A. No, I don't. It was just various items with
19 mechanical and customer relations.

20 Q. Do you remember whether maintenance of
21 equipment was discussed in that training?

22 A. There was a certain amount of it.

23 Q. Do you remember whether trichloroethylene
24 was discussed as a cleaning solvent for
25 maintaining equipment in that training?

1 A. No, it was not.

2 Q. Are you familiar with trichloroethylene?

3 A. No, I'm not.

4 Q. Have you ever heard of carbon tetrachloride?

5 A. I've heard of it, yes.

6 Q. How have you heard of it?

7 A. I've heard of it in fire extinguishers and
8 things like this.

9 Q. Is that fire extinguishers that you've used,
10 or just generally?

11 A. Just generally.

12 Q. Have you heard of it other than that?

13 A. No, I haven't.

14 Q. What's the next training you attended after
15 1961?

16 A. There were various. I'm not sure what years
17 they were, just various. Just several weeks
18 ago I went, but that was a leadership type
19 of training.

20 Q. You mentioned that you attended some
21 training while you were at Conrail?

22 A. That's correct.

23 Q. What was the first training you attended
24 sponsored by Conrail?

25 A. I don't recall. There's been several two or

1 three day classes, it was on some of the
2 equipment that we service and maintain.

3 Q. Were those trainings on maintenance
4 procedures associated with that equipment?

5 A. That is correct.

6 Q. Do you remember whether cleaning of parts
7 was ever discussed in those trainings?

8 A. No.

9 Q. When you say "maintaining equipment," what
10 do you mean?

11 A. Servicing the engines, troubleshooting, this
12 type of situation.

13 Q. In servicing the engines, do you mean like
14 changing the oil, that kind of thing?

15 A. That is correct.

16 Q. Do you remember whether handling waste oil
17 was ever discussed in those trainings?

18 A. Not in those trainings. The only time that
19 waste oil was discussed was we ordered tanks
20 to store the waste oil in for pickup.

21 Q. Was there a training associated with those
22 tanks?

23 A. No, there wasn't.

24 Q. Maybe we should go back. You mentioned that
25 you attended some trainings at Conrail with

1 respect to maintaining equipment. And you
2 said that part of that maintaining equipment
3 included the engine and changing oil. So
4 I'm asking you whether the handling of the
5 waste oil was ever discussed in that
6 training.

7 A. Not in that training. The waste oil was
8 discussed later, that they wanted us to get
9 tanks to put our waste oil in.

10 Q. And when you say "later," what date are you
11 referring to?

12 A. I don't recall the date.

13 Q. Have you had any training specifically
14 regarding hazardous materials, including
15 waste oil?

16 A. No, I haven't.

17 Q. You mentioned that you graduated from high
18 school in 1958, were you employed after
19 that?

20 A. Yes. For a few months I was associated with
21 a contractor for building homes.

22 Q. Was that also in Michigan?

23 A. No, that was in Pennsylvania.

24 Q. What year was that?

25 A. That was '59.

- 1 Q. How long did you work for that contractor?
- 2 A. About six months, approximately six months.
- 3 Q. What was your next job?
- 4 A. It was a Ford dealership in Hollidaysburg,
- 5 Pennsylvania.
- 6 Q. That was roughly 1960?
- 7 A. That is correct.
- 8 Q. What was your job responsibility at the Ford
- 9 dealership?
- 10 A. I started out in the cleanup department,
- 11 then to the parts department, and then to
- 12 the service department.
- 13 Q. How long did you work for the Ford
- 14 dealership, beginning in 1960?
- 15 A. I worked there until 1975.
- 16 Q. Where did you go in 1975?
- 17 A. To Conrail.
- 18 Q. In Dearborn?
- 19 A. In Altoona, Pennsylvania.
- 20 Q. What was your job title with Conrail in
- 21 1975?
- 22 A. I started as a trackman, and then repairman
- 23 later on in '75.
- 24 Q. What were your responsibilities as a
- 25 trackman?

1 A. Doing the basic track work, spiking ties, et
2 cetera.

3 Q. And as a repairman?

4 A. Repairs to equipment and parts utilization.

5 Q. How long were you a repairman for Conrail?

6 A. I'm not positive, but I think it was 1979 I
7 became an inspector.

8 Q. Is that also in Pennsylvania?

9 A. Yes, sir.

10 Q. What were your responsibilities as an
11 inspector?

12 A. Maintaining the files and parts inventory.

13 Q. What files are you referring to?

14 A. Time sheets, et cetera.

15 Q. Were you responsible for the inventory of
16 cleaning materials?

17 MR. CUNNINGHAM: Are you talking
18 about Altoona or Elkhart?

19 MR. LINDLAND: I'm talking about
20 Pennsylvania, when he was an inspector
21 in 1979.

22 MR. CUNNINGHAM: Objection.
23 What's this got to do with Elkhart?

24 MR. LINDLAND: We've had lots of
25 testimony that Conrail basically used

1 the same material in all their places;
2 they ordered it out of Pennsylvania
3 and I'm wondering what materials he
4 was in charge of maintaining in
5 Pennsylvania.

6 A. I was not in charge of the inventory. I was
7 in charge of acquiring it, and the other
8 people were responsible. I wasn't
9 responsible for where it was maintained or
10 anything like that.

11 BY MR. LINDLAND:

12 Q. I'm just asking whether you knew about the
13 cleaning material.

14 A. No, I didn't.

15 Q. How long were you an inspector, beginning in
16 1969?

17 A. Approximately a year and a half or two
18 years.

19 Q. Until roughly 1981?

20 A. 1980 or 1981.

21 Q. Where did you go in 1980 or 1981?

22 A. I was still at Altoona. I became general
23 foreman.

24 Q. General foreman of what?

25 A. Of equipment.

1 Q. What were your responsibilities as the
2 general foreman?

3 A. To assign and see that the work was done by
4 repairmen.

5 Q. Did your job responsibilities change after
6 1981?

7 A. Yes. It changed that I was responsible to
8 see that the work was being done, being
9 accomplished, and the inventory of the
10 machinery itself.

11 MR. ERMILIO: Are you asking
12 about change from his previous
13 position, or change after 1981?

14 BY MR. LINDLAND:

15 Q. I'm talking about your responsibilities as a
16 general foreman, whether those
17 responsibilities changed at all.

18 MR. ERMILIO: After 1981?

19 MR. LINDLAND: Right.

20 A. The only difference was that I was more
21 directly responsible to see that the work
22 was accomplished.

23 BY MR. LINDLAND:

24 Q. Did your title change?

25 A. That's what the general foreman's

1 responsibilities were.

2 Q. Did your title change after 1981?

3 A. Yes. In approximately '82 or '83 I became
4 the division equipment engineer.

5 Q. Was that also in Pennsylvania?

6 A. Yes, it was.

7 Q. How long were you the division equipment
8 engineer?

9 A. Until November of 1984.

10 Q. And what happened in 1984?

11 A. In 1984 I was promoted to region equipment
12 engineer, western region, Detroit.

13 Q. Is Detroit the same as Dearborn?

14 A. The first headquarters was in Detroit, and
15 then Dearborn.

16 Q. Have your responsibilities changed since
17 1983 when you were division equipment
18 engineer?

19 A. Yes. the responsibilities I had were
20 responsibilities given to me because we had
21 a larger territory. It's changed several
22 times between then because we had change in
23 our territories.

24 Q. What were your responsibilities then, in
25 1982, as division equipment engineer?

1 A. I had responsibility to see that the general
2 foreman and all the people underneath me
3 accomplished their task.

4 Q. By "division," you mean that was including
5 several yards; is that right?

6 A. The yards do not come under my
7 responsibility, the people that work on the
8 equipment in the yards is what my
9 responsibility was.

10 Q. You said that you were the division
11 equipment engineer, what's the division of?

12 A. The division was the Allegheny division in
13 Altoona, Pennsylvania; it was headquartered
14 at Altoona.

15 Q. You were responsible for equipment at all
16 yards all over the country?

17 A. No, for the Allegheny division.

18 Q. What were your responsibilities in 1984 as
19 the regional equipment engineer in Detroit?

20 A. I was responsible for the equipment on the
21 Michigan, Toledo, Chicago, and Cleveland
22 divisions.

23 Q. Does that include Elkhart, Indiana?

24 A. Yes, that includes Elkhart.

25 Q. Have your responsibilities changed since

1 1984?

2 A. The territory has changed; it went from the
3 region concept back to the division concept.

4 Q. Now you are a division engineer?

5 A. My title right now is assistant division
6 engineer of equipment.

7 Q. When did that title change occur?

8 A. It's been about two and a half or three
9 years that it's changed. It's when they did
10 away with the regions and Conrail was
11 divided into six divisions.

12 Q. Roughly 1988?

13 A. Somewhere around '88 or '89.

14 Q. You mentioned that back in 1975 you were a
15 repairman?

16 A. Yes, I was.

17 Q. For what sort of equipment was that?

18 A. For the maintenance away equipment.

19 Q. That would be the track equipment?

20 A. That is correct.

21 Q. Were you responsible for cleaning that
22 equipment?

23 A. I assisted in it. I wasn't responsible for
24 it, I assisted in it.

25 Q. The maintenance of equipment includes

1 cleaning it, is that right?

2 A. Our responsibility is cleaning it. We don't
3 always do the cleaning though.

4 Q. Who else would do the cleaning if you
5 didn't?

6 A. We have contractors that come in and do it.

7 Q. Is that true today?

8 A. Yes, it is.

9 Q. Has that always been true at Conrail, to the
10 best of your knowledge?

11 A. It's done both ways. We, on the Dearborn
12 division, decided that it was most
13 economical to have a contractor do it.

14 Q. In Pennsylvania you did not, is that right?

15 A. I assisted at times, but that wasn't my
16 prime responsibility.

17 Q. But you would have contractors that would
18 clean the equipment then?

19 A. At times, yes; we worked both ways.

20 Q. In the times that you assisted in cleaning
21 equipment do you remember what kind of
22 material was used to clean the equipment?

23 A. I do not recall the type of material. It
24 was what was in the account reference book
25 that was recommended for that; but the

1 substance of it, I'm not sure.

2 Q. When you say the "account reference book,"
3 you're referring to a catalog that you would
4 order material out of?

5 A. That is correct.

6 Q. And that would be through the Conrail store;
7 is that right?

8 A. That is correct.

9 Q. Do you know whether that was done at
10 Elkhart, as well?

11 A. As far as I know, not; since I have been
12 here it's been done by contractors.

13 Q. Again, that's since 1984 that it's been done
14 by contractors?

15 A. To the best of my knowledge.

16 Q. Assuming for a moment that Elkhart began
17 using contractors in 1984, and prior to that
18 they did things the way you did it in
19 Pennsylvania. If you can remember, what was
20 the material, not the name but the type of
21 substance that was used for cleaning --

22 MR. ERMILIO: Objection. Can you
23 rephrase that? The substance that was
24 used for cleaning in Altoona?

25 MR. LINDLAND: Right.

1 MR. ERMILIO: What's the need for
2 a hypothetical regarding cleaning in
3 Elkhart? He said that they had used
4 an outside contractor.

5 MR. LINDLAND: Since 1984.

6 MR. ERMILIO: If your question is
7 to what cleaners they used in Altoona,
8 that's fine. But there should be no
9 connection to Elkhart.

10 MR. LINDLAND: That's fine. I'll
11 rephrase the question.

12 BY MR. LINDLAND:

13 Q. You mentioned that the material you used to
14 clean equipment in Altoona was purchased
15 through the company store for cleaning
16 equipment; right?

17 A. That is correct.

18 Q. If you could just describe that material to
19 me; that is, is it a soap, a liquid, or a
20 solid?

21 A. It was a liquid; but the substance of it, I
22 don't know.

23 Q. Do you remember what kind of containers it
24 came in?

25 A. It was in a 55-gallon container.

1 Q. Was that for cleaning dirt off the outside
2 of equipment, or was that for cleaning
3 grease off of parts and the parts would be
4 repaired?

5 A. That particular substance was for cleaning
6 the outside of machinery.

7 Q. Do you remember what material you used to
8 clean the parts when a part would be
9 repaired?

10 A. No. It was a parts cleaning solution; but
11 its substance, I have no idea.

12 Q. Do you remember the nature of that solution?
13 In other words, was it like a paint thinner
14 or was it more like a soap?

15 A. It was a liquid.

16 Q. Do you remember any vapors associated with
17 it?

18 A. No.

19 Q. Do you remember what kind of container it
20 came in?

21 A. I do not recall what kind of container it
22 came in.

23 Q. Do you remember any other material that came
24 in 55-gallon drums that was used in your
25 department in Altoona while you were a

1 repairman?

2 A. The oils and antifreeze is the only thing I
3 can remember.

4 Q. But to the best of your knowledge the only
5 cleaner that was used was the cleaner that
6 you identified for the outside equipment?

7 A. That is correct.

8 Q. Are you familiar with any electrical
9 cleaners that were used?

10 A. No.

11 Q. Were you responsible for cleaning the
12 electrical equipment?

13 A. No, I wasn't.

14 Q. Who would be responsible for that?

15 A. That was done by B & B, Building and Bridges
16 -- like generators?

17 Q. I'm referring to the electrical components
18 on the equipment that you were responsible
19 for maintaining.

20 A. Oh. I don't recall any solution for that.

21 Q. You mentioned that in 1979, as inspector,
22 you were responsible for maintaining files
23 and parts inventory?

24 A. Right.

25 Q. Is that parts for track equipment?

1 A. That's correct.

2 Q. And would those parts be ordered through the
3 company store in Pennsylvania?

4 A. For the most part they would come from
5 vendors.

6 Q. Local vendors?

7 A. No. Usually the vendor that built the
8 equipment.

9 Q. Do you remember whether supplies used to
10 maintain equipment was also purchased from
11 those vendors?

12 A. I have no idea.

13 Q. You mentioned that you would buy parts from
14 the vendors who made the equipment that you
15 used; right?

16 A. Right.

17 Q. Would you also purchase equipment to
18 maintain the other equipment; for example,
19 cleaning materials, special wrenches, and
20 those kinds of things?

21 A. We ordered special wrenches. As far as any
22 chemicals, no. I have never been involved
23 with anything like that.

24 Q. To the best of your knowledge, vendors of
25 equipment would not recommend a certain

1 cleaning material for maintaining their
2 equipment?

3 A. I have never seen anything.

4 Q. Who would be the best person to talk to
5 about that?

6 MR. ERMILIO: Are you still
7 talking about Altoona?

8 MR. LINDLAND: Yes.

9 MR. ERMILIO: Is there a reason
10 why we're looking for names of people
11 in Altoona?

12 MR. LINDLAND: I'm not looking
13 for names of people in Altoona, I'm
14 looking for names and titles of people
15 who know about this at Conrail.

16 MR. ERMILIO: Who know about what
17 cleaners were used in Altoona?

18 MR. LINDLAND: No. Whether
19 vendors of equipment would recommend
20 certain cleaners to be used on the
21 parts of their equipment.

22 A. The only person I would think of would be
23 either Charlie McMahon in Philadelphia, who
24 is the superintendent of the work equipment;
25 or Fred Spurling, who is the superintendent

1 at Canton.

2 BY MR. LINDLAND:

3 Q. And they're both in Philadelphia?

4 A. Spurling is in Canton, Ohio; and McMahon is
5 in Philadelphia.

6 Q. In 1984 you became the regional equipment
7 engineer, and that includes the Elkhart
8 division?

9 A. That is correct.

10 Q. Who do you report to?

11 A. In 1984 I reported directly to R.W. Mefford,
12 who was the regional production engineer.

13 Q. Is he still in Dearborn?

14 A. No, he's retired.

15 Q. Do you know if he lives in Michigan?

16 A. Yes, he lives in Michigan.

17 Q. In the Detroit area?

18 A. Right. He works for the state of Michigan
19 now.

20 Q. But he's retired from Conrail?

21 A. That is correct.

22 Q. How many people were you responsible for in
23 1984?

24 A. You mean at the maximum, or average, or --

25 Q. Average is fine.

1 A. Probably around 80 to 90.

2 Q. Is there a person at the Elkhart yard who
3 would report directly to you?

4 A. Yes, Mark Ritchie. That is presently.

5 Q. I'm talking about 1984.

6 A. In 1984 it would have been R.F. Gilbert, who
7 is deceased.

8 Q. Was there anybody at the Elkhart yard that
9 reported to you other than R.F. Gilbert, and
10 other than Mr. Ritchie, between 1984 and the
11 present?

12 A. No.

13 Q. How long did R.F. Gilbert report to you
14 before Mr. Ritchie took over?

15 A. Four or five years.

16 Q. Until roughly 1989?

17 A. Right.

18 Q. Are you familiar with the person who would
19 have reported to you, if you had been there,
20 between 1976 and 1984?

21 A. Would I have been familiar with them?

22 Q. Right. The person's name in Mr. Ritchie's
23 position.

24 A. It would probably have been R.F. Gilbert.

25 Q. Mr. Gilbert was there for quite a while?

1 A. Yes.

2 Q. Do you know who preceded Mr. Gilbert?

3 A. No, I don't.

4 Q. Who was your predecessor?

5 A. John -- I can't recall what his last name
6 was.

7 Q. Do you remember the years that this John
8 individual had your position at the Dearborn
9 division?

10 A. I think he had approximately four years,
11 probably about 1980.

12 MR. LINDLAND: If you remember
13 his last name you can bring it up
14 anytime; that's fine.

15 THE WITNESS: I'll think of it.

16 BY MR. LINDLAND:

17 Q. Are you a member of a union?

18 A. I am a member of a union, but I can't vote.

19 Q. What union?

20 A. The BMW.

21 Q. You mentioned a few moments ago that you
22 have heard of carbon tetrachloride as used
23 in fire extinguishers, do you know whether
24 those fire extinguishers have ever been used
25 by Conrail?

1 A. Have they ever been used, or are they on the
2 property?

3 Q. Have they ever been used on Conrail
4 property?

5 A. I don't know. I would imagine, but I don't
6 know.

7 Q. What would you imagine?

8 A. That they have been used, but I don't know
9 for sure. I've never personally used them
10 or seen them used.

11 Q. Are fire extinguishers part of equipment
12 maintained by an equipment superintendent?

13 A. We do not maintain that, no. That is done
14 either by a contractor or our B & B
15 department.

16 Q. The B & B department?

17 A. Yes.

18 Q. You haven't heard of carbon tetrachloride in
19 any other nature?

20 A. No, I haven't.

21 Q. Are you familiar with any refrigerants
22 associated with maintaining equipment used
23 by the track department?

24 A. We use the R-12.

25 Q. R-12?

1 A. Yes.

2 Q. And that is what?

3 A. Freon.

4 Q. Where is this Freon from?

5 A. I don't know who manufactures it, but we
6 would get it through our purchasing
7 department.

8 Q. That's the purchasing department at Conrail
9 in Pennsylvania?

10 A. It usually comes through Philadelphia.

11 Q. Are you familiar with a material safety data
12 sheet?

13 A. I have them posted.

14 Q. You are familiar with what they are?

15 A. We post the material what we have in our
16 shop, like our oil substance.

17 Q. If you use a substance, you post the MSDS
18 sheet?

19 A. Yes.

20 Q. Do you know whether there is one for R-12
21 Freon?

22 A. If it is stored at a location, but it's not
23 stored at our location in Toledo; they keep
24 it on the vehicle.

25 Q. What vehicle?

1 A. Mechanic's van.

2 Q. Do you know whether there's a mechanic's van
3 out at the Elkhart yard?

4 A. Yes, there is.

5 Q. Why does a mechanic's van carry R-12 Freon?

6 A. They did carry it to recharge air
7 conditioning until the situation where now
8 we have to be certified, so we're in the
9 process of getting people certified.

10 Q. To the best of your knowledge do mechanic's
11 vans still have R-12 on them?

12 A. It's possible, but I don't know.

13 Q. Do you know what kind of containers it comes
14 in?

15 A. Pint containers.

16 Q. Like a small container?

17 A. Yes.

18 Q. Are you familiar with any other refrigerants
19 used or stored by the track department
20 that's associated with their equipment?

21 A. No, I don't.

22 Q. That's the only refrigerant that you're
23 aware of?

24 A. That's the only one I am aware of.

25 Q. Are you aware of any other refrigerants used

1 at the Elkhart rail yard, other than what
2 you've just identified?

3 A. No, I'm not familiar with any others. Other
4 departments might have it, but I'm not
5 familiar with it.

6 Q. Have you ever heard of anyone using carbon
7 tetrachloride at the Elkhart yard?

8 A. No, I haven't.

9 Q. Again, you've never heard of
10 trichloroethylene; is that right?

11 A. That's correct.

12 Q. What material, if any, is stored in
13 55-gallon drums that is used to maintain
14 equipment of the track department?

15 A. The only thing I'm familiar with is the oil,
16 and there's very little bit of that. We now
17 have containers, bulk storage, on that.

18 Q. By "bulk storage" do you mean underground or
19 above ground storage?

20 A. Above ground.

21 Q. Are you aware of any other material stored
22 in 55-gallon drums in your department at the
23 Elkhart yard?

24 A. I'm not familiar with any others.

25 Q. Are you familiar with any other liquids used

1 by your department in maintaining track
2 equipment?

3 A. I'm not aware of any others in the Elkhart
4 area of that; there could be, but I'm not
5 familiar with any of it.

6 Q. You told me that Mr. Ritchie reports to you
7 now?

8 A. Yes.

9 Q. What does he report to you?

10 A. He reports to me on the status of equipment.

11 Q. As to whether it's operating?

12 A. Operating, or it needs repairing, et cetera.

13 Q. What kinds of records does he send you
14 regarding his job?

15 A. Safety. His personal observations of
16 people.

17 Q. If you could explain that a little bit?

18 A. He takes the safety rule book and goes over
19 safety rules of the day. Plus if he sees
20 anyone doing an unsafe act he makes up
21 paperwork to cover it with them. And at
22 times he sends me the MW-15Bs on equipment
23 conditions.

24 Q. An MW-15B is a record that identifies
25 repairs that need to be made?

1 A. Needs to be done, or whether it's okay.

2 Q. Going back to the safety observations, you
3 mentioned there was some paperwork that he
4 would fill out; is that right?

5 A. That's correct.

6 Q. Does that paperwork have a CT number that
7 you're aware of?

8 A. No.

9 Q. Do you know what that record is called?

10 A. The two that he sends to me are S-101s and
11 S-102s.

12 Q. Those are the safety observations?

13 A. Yes.

14 Q. Are these handwritten observations of Mr.
15 Ritchie?

16 A. There's a format and he writes -- yes, he
17 does do writing on it.

18 Q. Are you aware of any S-101s or S-102s that
19 were sent to you regarding hazardous
20 materials, including oil or anything?

21 A. No. It's usually just the personal actions
22 of the people.

23 Q. And by "personal actions," what do you mean
24 by that?

25 A. I handle my tools correctly, I'm walking

1 safely; general things of this nature.

2 Q. If somebody was transferring oil to another
3 container and spilling it, would that be
4 considered a safety observation and recorded
5 on one of these forms?

6 A. No.

7 Q. Is there a form that that would be recorded
8 on?

9 A. We have nothing like that with our people.

10 Q. Are you aware of any policy or procedure in
11 the equipment department to record that kind
12 of information?

13 A. With us, I know of nothing. I know that
14 there are in other departments. We have to
15 abide by the spillage -- we're given out
16 instructions. That's why we've got the bulk
17 storage. We gave them special pans for
18 carrying oil out of engines, so that they're
19 properly disposed of; they have been told
20 verbally. They observe that and watch that
21 that is done correctly.

22 Q. But if they don't do it correctly there's
23 nothing that would indicate that; is that
24 right?

25 A. There are provisions on the S-101 that he

1 could write under "remarks" if the person
2 wasn't doing it correctly.

3 Q. If there was a spill of used oil because of
4 the employee's actions, that would be
5 recorded on one of those S-101s?

6 A. Yes. He has the opportunity to put it on
7 the remark section.

8 Q. To the best of your knowledge is that
9 normally done?

10 MR. ERMILIO: What do you mean by
11 "normally done?"

12 MR. LINDLAND: Strike that.

13 BY MR. LINDLAND:

14 Q. Have you ever seen that kind of remark?

15 A. No, because I've never seen that kind of
16 action by our people. They're careful in
17 what they do; they know the consequences.

18 Q. You mentioned that bulk storage tanks were
19 installed, do you remember what year that
20 was?

21 A. I think it was last year, in 1991.

22 Q. Prior to 1991 do you know whether there were
23 any instructions or policies regarding
24 transferring oil or used oil?

25 A. There were instructions by us to our people;

1 that's when we had the 55-gallon drums. And
2 then they had people come in to Elkhart and
3 pick it up then.

4 Q. Like a contractor?

5 A. That is correct.

6 Q. A waste management contractor?

7 A. That is correct.

8 Q. We'll get to that in a moment.

9 Approximately how many S-101s or S-102s do
10 you receive from Mr. Ritchie per month?

11 A. It's approximately two a week.

12 Q. Two a week?

13 A. Of the 101s. The 102s is about once
14 monthly.

15 Q. What's the difference between an S-101 and
16 an S-102?

17 A. An S-101 is going out and taking the safety
18 rule book out. An S-102 can entail several
19 things. It can have a demonstration on how
20 to do a particular operation. If there is a
21 safety bulletin out where someone might have
22 gotten hurt, or some special information,
23 it's usually done on an S-102.

24 An S-101 is basically going over the
25 safety rule book and going down through

1 with that.

2 Q. Like if somebody violated --

3 A. Not always violating. It's if they've done
4 a good job, too.

5 Q. It's both good and bad?

6 A. That's correct.

7 Q. Does Mr. Ritchie fill that out?

8 A. Yes.

9 Q. Do you know whether the track department,
10 that is the equipment maintainers, ever buy
11 material from local vendors?

12 A. I'm not privy to that; I don't know.

13 Q. Do you have any idea about the purchasing
14 arrangement of materials in Elkhart?

15 A. No.

16 Q. You said that there were no spills, to the
17 best of your knowledge, of oil or any other
18 material identified on an S-101 or S-102 in
19 Elkhart; right?

20 A. I don't recall ever seeing it.

21 Q. Do you recall hearing about any spills of
22 liquids by the track department people in
23 Elkhart?

24 A. I've never heard. I'm not familiar with it.

25 Q. If there was a spill and it wasn't recorded

1 on an S-102 or S-101 would Mr. Ritchie tell
2 you about it?

3 A. Possibly. Everything that happens he can't
4 communicate to me and I can't communicate to
5 him. It's possible that he might not have,
6 but he usually does. He's pretty good at
7 letting me know when there are problems.

8 Q. Is there any written procedure between the
9 division and the personnel at Elkhart
10 regarding reporting spills of material?

11 A. I don't know of any.

12 Q. It's strictly an oral understanding that he
13 will generally report these things to you if
14 they occur?

15 A. Right.

16 Q. Are you familiar with waste material
17 generated by track maintenance employees --
18 strike that. Are you familiar with waste
19 generated in the track department?

20 A. The only thing I am familiar with are the
21 drums, getting rid of the drums, which I set
22 up with the vendor, PWI, to pick up.

23 Q. The waste oil drums?

24 A. The waste oil drums and any 55-gallon drums
25 that were on the property; I set it up to

1 have them picked up. I had told Nick
2 Montagano, the supervisor there, to make
3 sure that this company picked it up whenever
4 they came up there.

5 Q. You're talking now about waste material
6 that's in drums in the whole yard?

7 A. Right. Anyone that wanted to have them
8 picked up, the provision was there for it to
9 be done.

10 Q. You mentioned Nick Montagano, he's the
11 supervisor of the track department?

12 A. Track engineer.

13 Q. What other departments made arrangements
14 with you to have their waste material
15 disposed of at the Elkhart yard?

16 A. No other department talked to me about it.
17 I just told Nick that if they had any drums
18 down there that anyone wanted to get rid of
19 that they could have it done with this
20 company that I had set up.

21 Q. Are there any records that would indicate
22 which departments had drums picked up by
23 this company?

24 A. I'm not familiar with any breakout of any
25 particular department. It's just that they

1 went in and picked up the drums.

2 Q. I presume this was a contractor?

3 A. That is correct.

4 Q. Exactly what is the name of the company?

5 A. It's PWI in Indianapolis. And that contract
6 was set up by the purchasing department in
7 Philadelphia.

8 Q. Who is the contact at PWI?

9 A. Dave Allison I think is his name. Oh, John
10 Craft is the man's name I couldn't think of
11 before.

12 Q. Your predecessor?

13 A. Yes.

14 Q. You mentioned that Dave Allison was your
15 contact at PWI?

16 A. That's correct.

17 Q. Do you know if Dave Allison is still with
18 PWI?

19 A. As far as I know he is.

20 Q. What was the first year that you had this
21 arrangement?

22 A. They started picking up the drums at the
23 beginning of this year.

24 Q. Do you know who picked up the drums, if
25 anyone, prior to that?

1 A. I have no idea.

2 Q. Do you know why it was changed; in other
3 words, why the waste disposal practices were
4 changed at the beginning of this year?

5 A. It wasn't just Elkhart, it was the whole
6 division. The barrels started to build up
7 on us. We used to be able to exchange them
8 with the people we bought off of, and it got
9 to be more of a problem to get them
10 exchanged. We wanted to get rid of the
11 drums, so we set up with PWI to pick up the
12 excess drums that were sitting there.

13 Q. Why was it a problem to exchange the drums?

14 A. They would get little nicks in them, or
15 something like that, and the vendors didn't
16 want them back. Some of them sat around and
17 the label might have come off, or something
18 like that, and they didn't want them.

19 Q. They wouldn't take them because there was no
20 label?

21 A. Right.

22 Q. Are you aware of any drums that weren't
23 taken because they were deteriorated or
24 dented?

25 A. Because they were dented, yes.

1 Q. Just because they were dented and not
2 because of any rusting condition?

3 A. I don't know whether they wouldn't take them
4 back. I know there were some barrels that
5 had some rust on them, but I don't know if
6 that was the reason they wouldn't take them
7 back. We wanted to get rid of them and
8 decided to have a contractor come in and
9 pick them up, which is not the easiest thing
10 to do.

11 Q. Are you aware of any drums out at the
12 Elkhart yard that were leaking prior to
13 being picked up?

14 A. I'm not aware of any.

15 Q. If there were drums that were leaking would
16 you have been notified?

17 A. I would not have been notified personally,
18 no.

19 Q. Do you know who would have?

20 A. I would imagine the person in that local
21 area, such as a track engineer.

22 Q. Would Mark Ritchie have been notified?

23 A. I doubt it very much.

24 Q. Did PWI inquire as to whether any of the
25 drums were leaking at the time you arranged

1 this contract with them?

2 A. No. They just had different situations that
3 they had, different rates for picking up
4 drums. They would have it tested so they
5 would know the proper disposal.

6 Q. If you could, explain the arrangement that
7 you had with PWI, please.

8 A. I would call them to notify the track
9 engineers to make arrangements for pick up.

10 Q. PWI would make the arrangements with the
11 individual track engineer?

12 A. Yes.

13 Q. When you say that you would call them, do
14 you mean somebody specific at PWI?

15 A. I usually contacted Dave Allison.

16 Q. And how often would they come out and pick
17 up drums?

18 A. Whenever we called them they would come out
19 and pick them up within a few weeks.

20 Q. You mentioned that they would pick up drums
21 that had accumulated at the yard?

22 A. It was also all the divisions.

23 Q. How long had these drums accumulated for?

24 A. I don't know.

25 Q. You also mentioned that in this agreement

1 there were sort of different price levels
2 depending on the material that was disposed
3 of?

4 A. That's correct.

5 Q. Can you describe for me those different
6 price levels?

7 A. I couldn't without having it in front of me.

8 Q. Without looking at the contract?

9 A. Right.

10 MR. LINDLAND: We request
11 production of that contract, and I
12 think we've got an agreement that
13 we'll send you another document
14 request?

15 MR. ERMILIO: It doesn't have to
16 be a formal document request, just
17 send it in a letter.

18 MR. LINDLAND: It's been a while
19 since we talked about that.

20 MR. ERMILIO: Just send a letter
21 and list the documents that you'd
22 like, and we'll respond to it.

23 BY MR. LINDLAND:

24 Q. You did mention that there was one price
25 category for the unknown material?

1 A. That's correct.

2 Q. To the best of your knowledge was that the
3 most expensive?

4 A. Yes, it was.

5 Q. Do you know approximately how many drums out
6 at Elkhart fell within that category?

7 A. I have no idea.

8 Q. Do you know who would know that?

9 A. Probably Nick Montagano might; I'm not sure.

10 Q. Do you know whether these drums were ever
11 sampled out at the Elkhart yard, prior to
12 being picked up by PWI?

13 A. I don't know.

14 Q. Do you know who would know that?

15 A. I don't know who would even know whether
16 they were or not.

17 Q. What was your participation in this
18 agreement?

19 A. My participation was setting up the contract
20 with Philadelphia to have these drums picked
21 up.

22 Q. Were you sort of a liaison between PWI and
23 Philadelphia?

24 A. That's correct. I requested the contract
25 from Philadelphia to have a vendor set up to

1 pick up the drums.

2 Q. Why did you request that from Philadelphia?

3 A. Because they were the ones that handle the
4 contracts; they pick the company, not me.

5 Q. Who asked you to even start this, or was
6 this your own idea?

7 A. Mr. J.R. Stump, the division engineer, asked
8 me to handle this.

9 Q. Do you know why Mr. Stump asked you to do
10 this?

11 A. He saw the accumulation of drums.

12 Q. Did he do a tour of the different yards? Is
13 that how he became aware of all these drums?

14 A. I don't know if he made a tour, he travels
15 through the division quite often. And
16 whether he was looking for this specifically
17 or not, I don't know.

18 Q. I'm trying to find out where it all started.
19 My understanding is that there's all these
20 drums out at these rail yards, and based on
21 prior testimony there's not a lot of
22 communication even between different
23 departments at one rail yard.

24 I'm trying to figure out who made this
25 global decision to get rid of all these

1 drums. And to the best of your knowledge it
2 was Mr. Stump, based on his tours?

3 A. That's correct.

4 MR. CUNNINGHAM: I object to the
5 editorial comment, but go on.

6 BY MR. LINDLAND:

7 Q. Do you know how long this contract is for,
8 the term of the contract?

9 A. It was renewed for another six months on an
10 as-needed basis. We had the contract
11 extended.

12 Q. If you could identify -- since we don't have
13 the contract, if you could just describe
14 when they would come out and under what
15 circumstances PWI would come out and pick
16 them up. You've mentioned that Nick
17 Montagano would call them and say that they
18 had drums, was there any regular basis to
19 this?

20 A. Nick not necessarily would call them.
21 Sometimes they would call me and say that
22 there were drums that needed to be picked up
23 and I would contact PWI and give them the
24 name of the person to contact to pick the
25 drums up.

1 Q. If they wanted drums picked up they would
2 first contact you?

3 A. Right.

4 Q. And you would call PWI?

5 A. Usually.

6 Q. Who contacted you from Elkhart regarding
7 drums being picked up?

8 A. On the initial?

9 Q. Anytime.

10 A. On the initial run, when it first started, I
11 contacted Nick Montagano and told him PWI
12 would be coming out.

13 Q. Did anybody else contact you regarding drums
14 to be picked up?

15 A. Initially I contacted all the people, the
16 track engineers, to have their people --

17 Q. I'm talking about just the Elkhart yard.
18 You said that people would call you and say
19 that they needed drums picked up, and you
20 would call PWI. Did anybody from Elkhart
21 call you other than Nick Montagano?

22 A. He's the only one from the Elkhart yard.

23 Q. To the best of your knowledge drums have
24 only been picked up once at the Elkhart
25 yard?

1 A. I think it was twice.

2 Q. Nick called you twice?

3 A. I think so, but I'm not sure on that.

4 Q. When was the first time Nick called you to
5 request drums be picked up; in other words,
6 when was the initial time?

7 MR. ERMILIO: I think you may
8 have confused his testimony. He said
9 that he had called Nick.

10 MR. LINDLAND: I'm sorry; that's
11 right.

12 BY MR. LINDLAND:

13 Q. And that was in 1992?

14 A. That's correct. The first of the year, when
15 we got the contract, I notified him that the
16 contract had been put in place.

17 Q. Had you had discussions regarding this
18 contract before the contract was in place,
19 with Nick Montagano?

20 A. I called to find out whether he had any
21 containers he wanted to get rid of. And he
22 said yes, he had some containers that he
23 needed to get rid off.

24 Q. Did he ever say how many he had?

25 A. I don't remember a specific number.

1 Q. Was there any record made or some documents
2 sent to you regarding this discussion?

3 A. With Nick?

4 Q. Right.

5 A. No. It was verbal, over the phone.

6 Q. To the best of your knowledge there's no
7 record that was kept on Nick's behalf
8 either?

9 A. I don't know of any.

10 MR. CUNNINGHAM: Just to be
11 helpful, in looking back at
12 Montagano's deposition, are you aware
13 that you asked him all about that?

14 MR. LINDLAND: Yes.

15 BY MR. LINDLAND:

16 Q. When was the second time that you talked to
17 Nick regarding disposal of those drums?

18 A. I don't recall. It was sometime afterwards,
19 maybe a month or two afterwards, to see if
20 there were any more that had to be picked
21 up.

22 Q. In either the first or second discussion
23 with Nick, did you discuss the type of
24 material that needed to be picked up?

25 A. No.

1 Q. You mentioned earlier that you had material
2 safety data sheets in your office; is that
3 right?

4 A. Yes. By the rules you have to post any
5 material you have in there that might be
6 considered hazardous in the shops.

7 Q. Are all these posted?

8 A. They're posted at the particular area that
9 they're stored in.

10 Q. I'm asking you whether you have records of
11 MSDS sheets in your office in Dearborn.

12 A. I think I have a copy of what the shop
13 supervisor made up in Toledo; he gave me a
14 copy.

15 Q. Of all MSDS sheets?

16 A. You're talking about what we have in that
17 particular shop?

18 Q. Right.

19 A. He gave me a copy of what is in the
20 particular shop in Toledo.

21 Q. Do you have copies of MSDS sheets which
22 apply to materials used at the Elkhart yard?

23 A. No, I don't.

24 Q. Those are all kept out at the yard, to the
25 best of your knowledge?

1 A. To the best of my knowledge, yes.

2 Q. If we can just go back for a moment to the
3 waste disposal contract that you have, have
4 you been billed for any of that material
5 yet?

6 A. I'm sure they have; it went to our billing
7 department. The budget people in Dearborn
8 take care of the bills; they send the bills
9 into the budget department in Dearborn.

10 Q. Are you aware of how much that bill was for?

11 A. I'm not sure of the exact amount, but it's
12 fairly expensive; I know that. I just heard
13 figures of certain locations.

14 Q. Are you familiar with any rules or
15 regulations relating to track department
16 equipment maintenance people wearing
17 protective clothing?

18 A. Protective clothing is in our safety rule
19 books.

20 Q. Other than what's in the safety rule book,
21 you're not aware of any policies or
22 procedures regarding that?

23 A. No, just what's in the safety rule book.

24 Q. Who is in charge of environmental affairs,
25 if anyone, for the track department; do you

1 know?

2 A. Tom Reynolds is the industrial engineer of
3 environmentalists at Dearborn.

4 Q. Do you know how long Mr. Reynolds has been
5 there?

6 A. I'm not real familiar. He was in Dearborn
7 and then he went to Indianapolis, and back
8 to Dearborn.

9 Q. He's responsible for the Elkhart yards?

10 A. That's part of his area of responsibility,
11 yes.

12 Q. Do you know whether he's been with Conrail
13 more than 10 years?

14 A. Yes, he has.

15 Q. Are you familiar with a Safety Kleen parts
16 washer?

17 A. Yes. I have one in the Toledo shop.

18 Q. Do you know whether there's one in the
19 Elkhart yard?

20 A. I understand there's one down there.

21 Q. What's your understanding of the Safety
22 Kleen parts washer in the Elkhart yard?

23 A. I'm not familiar with that. Mr. Ritchie
24 would have to answer that. I'm familiar
25 with the one at the shop because I've talked

1 to them about that one; the people come in
2 and service it.

3 Q. Are you familiar with the material used in
4 the Safety Kleen parts washer?

5 A. I'm not familiar with what chemical they
6 use. It's the prescribed cleaning solution
7 that we get through the purchasing people in
8 Philadelphia.

9 Q. Do you know how long that machine has been
10 there?

11 A. No, I don't.

12 Q. Do you know how long the machine has been in
13 Elkhart?

14 A. No, I don't.

15 Q. Was it there when you got there in 1984,
16 when you came to this division in 1984?

17 A. I'm not sure if it was Safety Kleen, or what
18 company it was.

19 Q. Mr. Ritchie will know that?

20 A. Possibly. I'm not sure if he would know.

21 Q. Are you familiar with any equipment or
22 machinery used to clean up spills of
23 anything on the tracks?

24 A. No, I'm not. I don't get into that area.

25 Q. The equipment that you are in charge of then

1 is what, if it's not track cleaning
2 equipment?

3 A. Are you talking about chemical or track
4 cleaning?

5 Q. I'm talking about track cleaning of
6 anything, not just hazardous materials or
7 chemicals.

8 A. We have a yard cleaner that picks up debris.

9 Q. My understanding is that that's a brush on
10 the front and buckets and --

11 A. That's correct.

12 Q. Is there another machine that's used to
13 clean up spills of liquids?

14 A. I'm not familiar with it.

15 Q. For example, a vapor extraction machine?

16 A. I'm not familiar with that.

17 Q. To the best of your knowledge the track
18 department has no machine to clean up spills
19 of liquids?

20 A. I don't know of any, just the yard cleaner.

21 Q. Is there somebody else that would know about
22 a machine like that, like the one I just
23 described?

24 A. Nick Montagano, if he has someone come in to
25 clean up and he gets involved with a

1 contractor.

2 MR. LINDLAND: I have no further
3 questions, although we reserve the
4 right to reexamine this witness
5 subject to the production of documents
6 identified in this deposition.

7 CROSS EXAMINATION

8 MR. CUNNINGHAM: Mr. Dively, I'm
9 Pierce Cunningham, an attorney
10 representing Penn Central Railroad; I
11 just have a few questions for you. If
12 you don't understand any of the
13 questions, please let me know and I'll
14 try to make the question more clear.

15 BY MR. CUNNINGHAM:

16 Q. You have never worked at the Elkhart yard;
17 isn't that correct?

18 A. No, I haven't. I have been there and I've
19 gone there to look at equipment, but never
20 worked there.

21 Q. You are a supervisor in Dearborn, which is
22 the reporting region for Elkhart; is that
23 right?

24 A. That is correct.

25 Q. And you are in a limited area of the system

1 in that, as I understand it, as an equipment
2 engineer which entails, as I understand it,
3 the maintenance and upkeep of equipment that
4 is used in various yards in your region?

5 A. That is correct.

6 Q. And Mr. Ritchie, who we'll hear from this
7 afternoon, is one of the people that
8 currently reports to you?

9 A. That is correct.

10 Q. And at this time, as a regional engineer,
11 who do you report to?

12 A. At this time I report to J.R. Sump, the
13 division engineer.

14 Q. Where is he located?

15 A. Dearborn.

16 Q. Who does he report to?

17 A. He reports to Mr. Will Brant in
18 Philadelphia.

19 Q. That, basically, is the chain of command:
20 Will Brant, Stump, you, and Ritchie?

21 A. That is correct.

22 Q. Do you know, of your own knowledge, through
23 rumor or otherwise, about any spill of
24 hazardous material at the Elkhart yard at
25 anytime?

1 A. No, sir; I'm not familiar with any.

2 Q. Just a few more questions on forms that are
3 submitted to you by people in Elkhart. You
4 mentioned S-101s and S-102s, and I'm
5 wondering what the purpose of those reports
6 or records are?

7 A. That's for me, so that I know that the
8 employees are getting the message on safety
9 and on safe practices, or any unsafe
10 conditions dealing with the equipment.

11 Q. Do you receive what has been described by
12 Mr. Garry as "unusual occurrence reports,"
13 which are apparently labeled C-275 C forms?

14 A. No, I don't.

15 Q. Those are received by another department?

16 A. That is correct.

17 Q. Do you know whether they're received by
18 anyone at Dearborn?

19 A. I'm not sure. I would imagine, but I can't
20 say with authority.

21 Q. Who would be the individual or department
22 that would probably receive such reports?

23 A. The department head of the one that is
24 billing it out. In other words, if it would
25 be the mechanical department, I'm sure the

1 mechanical man in Dearborn would.

2 Q. I think I understand. If there was an
3 unusual occurrence involving the maintenance
4 of equipment, and I can't imagine what that
5 would be, but let's assume something like
6 that did happen, then you would get a
7 C275C, but only in that kind of situation,
8 where somebody may have been killed as a
9 result of maintenance of equipment or
10 failure to maintain the equipment?

11 A. If it was something to do with equipment,
12 they would probably be a part of the package
13 sent. I possibly could receive it.

14 Q. But it would only be in a rare situation; is
15 that correct?

16 A. That is correct.

17 MR. CUNNINGHAM: That's all the
18 questions I have.

19 REDIRECT EXAMINATION

20 BY MR. LINDLAND:

21 Q. You mentioned that you have been out at the
22 Elkhart yard to look at equipment or to
23 supervise or inspect equipment?

24 A. Correct.

25 Q. Do you remember seeing any 55-gallon drums

1 out there at the yard while you were there?

2 A. I recall seeing some, yes.

3 Q. Where do you recall seeing those?

4 A. Down around the storage area down towards
5 the car shop.

6 Q. Near the car shop?

7 A. Yes.

8 Q. What year is this that you're referring to?

9 A. I saw them last year. I don't recall any
10 specific time or anything like that, but
11 I've seen them when I've been in there.

12 Q. Do you remember what color those drums were
13 that you saw?

14 A. No, I don't.

15 Q. Do you have any idea what was in them?

16 A. No, I don't.

17 Q. If we could just go back to the S-101 and
18 the S-102 forms, you mentioned that there
19 was a section on there that had a "remarks"
20 box. And that even though there's no policy
21 or written procedure for recording spills of
22 material, that you would expect that that's
23 where it would be recorded?

24 A. That is correct.

25 Q. And to the best of your knowledge there has

1 never been a recording on that?

2 A. I don't recall ever seeing any.

3 Q. How long do you keep S-101s and S-102s?

4 A. For one year.

5 Q. Is a copy sent to Philadelphia?

6 A. It is typed in by the clerk in Dearborn, all
7 the S-101s and S-102s.

8 Q. Typed into where?

9 A. Into the computer.

10 Q. Is that the TRIM system?

11 A. I'm not sure what system it is, but it's
12 inputted.

13 Q. Are you familiar with the system at all, why
14 there is a system for this information?

15 A. It's for the follow-up on the safety
16 program.

17 Q. Do you know who runs this system?

18 A. It's done in the safety department in the
19 Dearborn office.

20 Q. Who is in charge of the safety department in
21 the Dearborn office?

22 A. I'm not positive, but I think it's the
23 division superintendent.

24 Q. Who is that?

25 A. Mr. Downing.

1 Q. Do you happen to know the individual in
2 charge of that computer system in the safety
3 department?

4 A. Just the first name of the girl that inputs,
5 and that is Faye.

6 Q. When you need to input this material you
7 call this woman, Faye, in that department
8 and she inputs the material?

9 A. They send a copy in to me, which I look at.
10 I take it down to her and she inputs off
11 that piece of paper. I don't retain Mark
12 Ritchie's copy. I retain any copies that I
13 might make. His are inputted through the
14 woman down there.

15 Q. You said that you would retain any copies
16 that you might make; does that mean you make
17 them all the time, or that you may decide
18 that one is worth making a copy of?

19 A. I'm talking about the ones that I make, the
20 ones that I personally make up on my people.
21 My supervisor and I make up 101s and 102s
22 also.

23 Q. You would not keep a copy of one sent to you
24 by Mr. Ritchie?

25 A. That is correct.

1 Q. The only source, if I wanted to get a copy
2 of one of those, would be through the
3 computer system; is that right?

4 A. Correct. Mr. Ritchie should have a copy; he
5 should retain a copy for one year.

6 Q. Do you know what he does with those after
7 one year?

8 A. After one year they are done away with.

9 Q. When you say "done away with," are they
10 shipped off to a storage facility?

11 A. No. Since the copy is made at the office,
12 we only have to keep it one year. They are
13 thrown away.

14 Q. But the information is kept in a computer
15 system?

16 A. Right.

17 Q. Do you know how long it's kept in that
18 system?

19 A. I'm not sure.

20 Q. Do you know if this system is connected to
21 other divisions in the country?

22 A. I don't know.

23 Q. Mr. Downing would have that information?

24 A. His people will.

25 Q. Faye, right?

1 A. Right.

2 Q. You mentioned a while ago that there were
3 pans or some kind of containment that was
4 used in the track department to catch oil
5 when it was changed?

6 A. That's correct.

7 Q. When was that pan used? In other words,
8 when was the first time you began, as a
9 procedure or policy in the track department,
10 to use that?

11 A. The Rubbermaid pan, the special pan, we just
12 started getting those about three or four
13 years ago. We used other types of pans. It
14 wasn't a a regular pan, it might have been a
15 metal pan or something like that. These
16 special pans were instituted about three
17 years ago.

18 Q. What makes them special, if you know?

19 A. Because it's a type that's easier to handle
20 when you pull it out from underneath the
21 machine; it's not apt to spill out.

22 Q. It's not as likely to spill out of one of
23 these new materials as it was the previous?

24 A. That's right.

25 MR. LINDLAND: I have no further

1 questions.

2 RECROSS EXAMINATION

3 BY MR. CUNNINGHAM:

4 Q. Mr. Dively, are the C275Cs on computer in
5 Dearborn?

6 A. I don't know.

7 MR. ERMILIO: Are you talking
8 about the unusual occurrence report?

9 MR. CUNNINGHAM: Right.

10 MR. ERMILIO: I'm not sure that's
11 the right "CT" number.

12 MR. CUNNINGHAM: Let's refer to
13 it then as the "Unusual Occurrence
14 Report" forms.

15 BY MR. CUNNINGHAM:

16 Q. You don't know whether they're on computer
17 or not?

18 A. No, sir; I don't.

19 Q. Tell me a little about the chain of command
20 with regard to 102s and 101s that are
21 inputted. You talk about Faye, who is in
22 Mr. Downing's office, and I assume that Faye
23 is one of the administrative people in his
24 office?

25 A. She's the clerk that inputs.

1 Q. Do you know what, if any, relationship there
2 is in terms of the computer with
3 Philadelphia, or who would know?

4 A. Here again, you'd have to check with them to
5 see.

6 Q. Who is them?

7 A. Probably Mr. Downing could give you the
8 information you needed.

9 Q. He knows all about the computer things?

10 A. He knows the the road conditions.

11 Q. That's the only thing you know about in
12 terms of the personnel that would be
13 responsible for the computer, is that right?

14 A. Yes.

15 MR. CUNNINGHAM: That's all the
16 questions I have.

17 FURTHER REDIRECT EXAMINATION

18 BY MR. LINDLAND:

19 Q. I have one more question on the computer.
20 When did this system become implemented; in
21 other words, in 1984 was it there?

22 A. Yes, they inputted the safety.

23 Q. In 1984?

24 A. Yes.

25 Q. Do you know when they started using the

1 system?

2 A. No, I don't.

3 MR. LINDLAND: No further
4 questions.

5 MR. CUNNINGHAM: Nothing further.

6 MR. ERMILIO: I have no
7 questions.

8 MR. LINDLAND: Thank you, Mr.
9 Dively.

10

11

12

Ronald L. Dively

13

14

SUBSCRIBED AND SWORN TO before
me this _____ day of

15

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_____, A.D., 1993.

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19

Notary Public

20

State of Residence:

21

County of Residence:

22

Commission Expires:

23

24

25

CERTIFICATE

I, Geneva L. Sones, a Notary Public in and for the County of St. Joseph, State of Indiana, do hereby certify there appeared before me on Thursday, December 17, 1992, Ronald L. Dively, who was first sworn by me to testify the truth, the whole truth and nothing but the truth to questions propounded at the taking of the foregoing deposition.

I further certify that I then and there reported in machine shorthand the proceedings at the said time and place; that the proceedings were then reduced to typewriting from my original shorthand notes; and that the foregoing typewritten transcript is a true and correct record thereof.

I further certify that the deposition was read and signed in the presence of a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this _____ day of _____, A.D., 1993.

Geneva L. Sones, Notary Public
State of Indiana, St. Joe County
My Commission Expires: 8-21-96